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United States
Circuit Court of Appeals

For the Ninth Circuit.

K. MATUSAKE,

Plaintiff in Error,

.. vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

AUG 25 1925

F. D. MONCKTON



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Circuit Court of Appeals
For the Ninth Circuit.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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(Comm'r. #2623-B. \$500.)

EDWARD E. CUSHMAN.

United States District Court, Western District of
Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATSUSAKE,
Defendant.

*Page-number appearing at foot of page of original certified Trans-
script of Record.

INFORMATION.

BE IT REMEMBERED, that Thos. P. Revelle, Attorney of the United States of America for the Western District of Washington, who for the said United States in this behalf prosecutes in his own person, comes here into the District Court of the said United States for the District aforesaid on this 23d day of June, in this same term, and for the said United States gives the Court here to understand and be informed [2]

COUNT I.

That on the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, K. MATSUSAKE (whose true given name is to the said United States Attorney unknown), then and there being, did then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit, one hundred eighty-five (185) gallons of a certain liquor known as distilled spirits, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said K. MATSUSAKE for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, barter-

ing, exchanging, giving away, and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said K. MATSUSAKE as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT II.

That on the twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-four, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, and at a certain place situated at 606 Sixth Avenue South, in the said City of Seattle, K. MATSUSAKE (whose true given name is to the said United States Attorney unknown), then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, distilled spirits, and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, and which said maintaining of such nuisance by the said K. MATSUSAKE as aforesaid, was then and there unlawful and prohibited by the Act of Congress

passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,
United States Attorney.

J. W. HOAR,
Special Assistant United States Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jun. 23, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [4]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATUSAKE,

Defendant.

ARRAIGNMENT AND PLEA.

Now on this 17th day of November, 1924, the above defendant comes into open court for arraignment accompanied by his attorney A. G. McBride and says that his true name is K. Matusake. Whereupon he here and now enters his plea of not guilty.

Journal No. 12, page 467. [5]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATUSAKI,

Defendant.

TRIAL.

Now, on this 18th day of December, 1924, this cause comes on for trial with defendant present accompanied by his attorney A. G. McBride. A jury is empaneled and sworn as follows: Charles Brockman, Misall Chabot, F. W. Ellis, John P. Reynolds, Thomas M. Reeder, H. J. Hart, R. W. Thompkins, H. B. Ellis, A. J. Browning, Colin Campbell, J. S. N. Schmidt, and J. S. Grant. Opening statement is made to the jury by counsel for the Government, Government witnesses are sworn and examined as follows: Walter Justi, W. M. Whitney, H. B. Mooring and C. W. Cline. Government exhibits numbered 1, 2, 3, 4, 5, 6 and 7 are introduced as evidence. Government rests. Defendant moves to strike all evidence adduced for the reason of a defective search-warrant. Said motion is denied with exception allowed. Defendant's witnesses are sworn and examined as follows: U. C. Griffin, K. Matusake, through an interpreter, Ira Pearshall, Y. Uchida, K. Emura. Defendant rests.

Government witnesses in rebuttal are sworn and examined as follows: Justi, Whitney, Mooring. Jury is admonished and excused until 9:30 A. M. at which time cause is likewise continued.

Journal No. 13, page No. 44. [6]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATUSAKE,

Defendant.

TRIAL RESUMED.

Now on this 19th day of December, 1924, this cause comes on for further trial. Defendant is present in court and argument is had. The jury after being admonished retire for deliberation. Thereafter jury returned into open court and all are present and a verdict is returned. Verdict reads as follows: "We, the jury in the above-entitled cause, find the defendant, K. Matusake, is guilty as charged in Count I of the Information herein; and further find the defendant, K. Matusake, is guilty as charged in Count II of the Information herein.

R. W. THOMPCKINS,

Foreman."

Journal No. 13, page No. 45. [7]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATUSAKE,

Defendant.

VERDICT.

We, the jury in the above-entitled cause, find the defendant, K. Matusake, is guilty as charged in Count I of the Information herein; and further find the defendant, K. Matusake, is guilty as charged in Count II of the Information herein.

R. W. TOMPKINS,

Foreman.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 19, 1924. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [8]

In the United States District Court, Western
District, Northern Division.

No. 8652.

UNITED STATES,

Plaintiff,

vs.

M. MASSUSAKE,

Defendant.

MOTION FOR A NEW TRIAL.

The said defendant moves the Court to set aside the verdict in said cause and grant a new trial for the following reasons:

First: Errors of law occurring at the trial and excepted to at the time by the defendant which prevented the defendant from having a fair trial.

Second: Newly discovered evidence.

Third: The verdict is not supported by the evidence and is contrary to the testimony in said cause.

A. G. McBRIDE,

Attorney for Defendant.

Received a copy of the foregoing motion.

District Attorney.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 5, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [9]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATUSAKE,
Defendant.

HEARING ON MOTION FOR NEW TRIAL.

Now on this 5th day of January, 1925, this cause comes on for hearing on motion for new trial, with A. G. McBride as counsel for defendant, present. Motion is denied with exception allowed.

Journal No. 13, page 81. [10]

United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATUSAKE,
Defendant.

SENTENCE.

Comes now on this 6th day of January, 1925, the said defendant, K. Matusake, into open court

for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said. Wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED, and ADJUDGED by the Court that the defendant is guilty of violating the National Prohibition Act, and that he be punished by being imprisoned in the Whatcom County Jail or in such other place as *may hereafter* provided for the imprisonment of offenders against the laws of the United States for the term of three months on Count II, and to pay a fine of \$300.00 *Dollars* on Count I; that execution issue therefor and that he be placed in the custody of the United States Marshal until such fine is paid, or until he shall be otherwise discharged by due process of law.

Judgment and Decree No. 4, page 250. [11]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATUSAKE,

Defendant.

PETITION FOR WRIT OF ERROR.

To the Above-entitled Court and to the Honorable
JEREMIAH NETERER, Judge Thereof:

Comes now the above-named defendant by his attorney, Adam Beeler, and shows that on the 19th day of December, 1924, a jury impaneled in the above-entitled court and cause returned a verdict finding the above-named defendant guilty of the information theretofore filed in the above-entitled court and cause, and thereafter, within the time limited by law under the rules of this court, the defendant moved for a new trial, which said motion was by the Court overruled and an exception thereto allowed; and thereafter, on the 5th day of January, 1925, the defendant was, by order and judgment and sentence of the above-entitled court in said cause, sentenced as follows:

On Count I of the Information, to pay a fine of Three Hundred Dollars (\$300.00).

On Count II of the Information, to imprisonment for three months in Whatcom County Jail.

And, your petitioner herein, feeling himself aggrieved by said verdict, judgment and sentence of the court, entered herein as aforesaid, and by the orders and rulings of said court and proceedings in said cause, now herewith petitions this court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance [12] with the pro-

cedure of said court made and provided, to the end that the said proceedings as herein recited, and as more fully set forth in the assignments of error presented herein, may be reviewed and the manifest error appearing on the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and the ruling of the Court provided.

WHEREFORE, the premises considered your petitioner prays that a writ of error issue to the end that said proceedings of the District Court of the United States for the Western District of Washington, Northern Division, may be reviewed and corrected; said error in said record being herein assigned and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination that said defendant be admitted to bail.

ADAM BEELEER,

Attorney for Petitioner, Plaintiff in Error.

Acceptance of service of the within petition for writ of error acknowledged this 6th day of January, 1925.

THOS. P. REVELLE,

Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jan. 6, 1925. Ed. M. Lakin, Clerk.
By S. M. H. Cook, Deputy. [13]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

ASSIGNMENT OF ERRORS.

Comes now the above-named defendant, K. Matusake, and in connection with his petition for writ of error in this case submitted and filed herewith, assigns the following errors which the defendant avers and says occurred in the proceedings and at the trial in the above-entitled cause and court, and upon which he relies to reverse, set aside and correct the judgment and sentence entered herein, and says that there is manifest error appearing, upon the face of the record, and in the proceedings, is this:

1. That the defendant prior to the trial of said cause filed two motions, one of which motion was entitled "Motion to Suppress Evidence and Dismiss the Action" and the other of which motions was entitled "Motion and Affidavit to Quash Warrant," which said two motions were

heard and considered together and at the same time by the court and were both denied by the court, and to which ruling the defendant then and there excepted for the reason and upon the ground that the evidence was illegally and unlawfully seized and obtained, and the defendant's person and premises were illegally and unlawfully searched in that the search and seizure was made without any valid search-warrant, but was made upon a purported search-warrant which was in law an invalid search-warrant in that the premises searched were not properly described, and further that the search-warrant itself [14] failed to state any probable cause for the issuance of the same, and for the further reason and upon the ground that a certain paper taken from the person of the defendant was taken in violation of the Constitution of the United States and particularly in violation of the Fourth and Fifth Amendments to the Constitution of the United States, which exceptions were by the Court allowed and now the defendant assigns as error the ruling of the Court upon the said motion.

2. That during the course and progress of the trial of the defendant herein, the defendant made due and timely exceptions to the introduction of the evidence on the grounds and for the reason that said evidence and also the testimony relating thereto was obtained unlawfully and by virtue of an illegal and void search-warrant, which objections were by the Court overruled, and to which ruling exceptions were by the Court allowed and now the defendant

assigns as error the ruling of the Court upon such exceptions.

3. Thereafter, and within the time limited by law, and the orders and rules of the court, the defendant moved the Court for an order granting to him a new trial, which motion was denied by the Court, to which ruling of the Court the defendant then and there duly excepted, and the exception was by the Court allowed; and now the defendant assigns as error the ruling of the Court upon such said motion.

And as to each and every assignment of error, as aforesaid, the defendant says that at the time of making of the order or ruling of the Court complained of, the defendant duly asked and was allowed an exception to the ruling and order of the Court.

ADAM BEELER,
Attorney for Defendant.

Acceptance of service of within assignment of errors acknowledged this 6th day of January, 1925.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [15]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MATSUSAKE,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

A writ of error is granted this 6th day of January, 1925, and it is further ORDERED that pending the review herein, said defendant be admitted to bail and that his supersedeas bond be fixed at Two Thousand Dollars (\$2,000.00); and it is further

ORDERED, that upon said defendant, K. Massusake, filing his bond in the aforesaid sum in due form, to be approved by the clerk of this Court, he shall be released from custody pending the determination of the writ of error herein assigned.

Done in open court this 6th day of January, 1925.

EDWARD E. CUSHMAN,

Judge.

Received a copy of the above order this 6th day of January, 1925.

THOS. P. REVELLE,

Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern

Division. Jan. 6, 1925. Ed. M. Lakin, Clerk. By
S. M. H. Cook, Deputy. [16]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

SUPERSEDEAS BOND.

KNOW ALL MEN BY THESE PRESENTS:

That we K. Matusake, as principal, and National Surety Company, as surety, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of Two Thousand (\$2,000.00) Dollars, lawful money of the United States for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that, whereas, the above-named defendant, K. Matusake, was on the 5th day of January, 1925, sentenced in the above-entitled cause as follows:

On count I of the information, to pay a fine of Three Hundred Dollars, (\$300.00); on count II of the information to imprisonment for three months in Whatcom County Jail;

And, whereas, the above-entitled court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of Two Thousand Dollars (\$2,000.00);

NOW, THEREFORE, if the said defendant, K. Matusake, shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the premises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall pursuant to any order issued by said District Court surrender himself and obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 5th day of January, 1925.

[Corporate Seal] K. MATSUSAKE,
Principal.
[Seal] NATIONAL SURETY COMPANY.
By C. B. WHITE,
Attorney-in-fact,
Surety. [17]

Approved, Jan. 6th, 1925.

A. C. BOWMAN,
U. S. Comm'r.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [18]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

K. MASSUSAKE,
Defendant.

ORDER EXTENDING TIME TO AND INCLUDING MARCH 3, 1925, TO FILE BILL OF EXCEPTIONS.

For good cause now shown, it is ORDERED that the time within which the defendant shall serve

and file his proposed bill of exceptions in the above-entitled cause be and the same hereby is extended to and including the 3d day of March, 1925.

Dated this 6th day of January, 1925.

EDWARD E. CUSHMAN,
United States District Judge.

Received copy of above order this 6th day of January, 1925.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [19]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MASSUSAKE,
Defendant.

ORDER EXTENDING TIME TO AND INCLUDING MARCH 16, 1925, TO FILE BILL OF EXCEPTIONS.

For good cause now shown, it is ORDERED that the time within which the defendant shall serve and file his proposed bill of exceptions in the above-

entitled cause be and the same hereby is extended to and including the 16th day of March, 1925.

Dated this 2d day of March, 1925.

EDWARD E. CUSHMAN,
United States District Judge.

Received copy of above order this 2d day of March, 1925.

J. W. HOAR,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Mar. 2, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [20]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8652.

THE UNITED STATES,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

BILL OF EXCEPTIONS.

On the 1st day of December, 1924, at the hour of 10:00 o'clock A. M., said cause came on regularly for hearing on the motion of defendant to quash the search-warrant issued and served in said action, and also, on the motion of defendant to suppress certain evidence, both of said motions were heard

by the Court at the same time, Judge E. E. Cushman presiding, the plaintiff appeared by its assistant district attorney, C. T. McKinney and the defendant appeared in person and by his attorney, A. G. McBride.

The said motion to quash was in words and figures as follows:

United States District Court, Western District,
Northern Division.

THE UNITED STATES,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

MOTION TO QUASH WARRANT.

The said defendant moves the Court to quash the search-warrant issued herein and set aside the alleged service for the reasons following:

1st. That no inventory was ever made, verified and filed with this court as is required by law and ordered by the Court. [21]

2d. That the return on the alleged search-warrant does not show a true report of the acts of the officer executing the same as ordered so to do by the Court in said warrant in this, that the officer executing the same forcibly took from the person of the said defendant one written contract lease.

3d. That no search-warrant was given to defendant and he was not given a receipt when said

paper was taken from him, or at all, as the law directs.

4th. That the search-warrant did not command the officer serving it to bring the property seized before the court as the law directs.

5th. That defendant's name did not appear in said search-warrant.

6th. That defendant's only place of business is at 604½ Sixth Ave., South Seattle, *and includes* hotel roomers living therein, consisting of two upper floors and more than fifty rooms and apartments and faces on said Sixth Avenue aforesaid, and there is no other building in Seattle of the same number and no search was made of said hotel and apartment house. That number 606 is in the basement of said building aforesaid. That Cascade Soda Co. is the lessee of said 606.

7th. That the search-warrant fails to state names of the persons who made the affidavits supporting probable cause in the affidavit filed for a search-warrant and failed to state any probable cause for issuing the same.

8th. That the complaint and search-warrant do not describe any place owned by or in the possession of defendant, or under his control.

9th. That the affidavit upon which the search-warrant was issued did not state or show that the property to be seized under said warrant for search and seizure was used as means of committing a felony as the law directs.

10th. That said warrant fails to describe any place other than said No. 606, First Ave., South and

did not name defendant as owner of any other place, and did not name defendant as owner of said number 606.

11th. That the rooms searched were not described in the search-warrant.

Oral and written evidence will be offered in support of this motion.

A. G. McBRIDE,
Attorney for Defendant.

State of Washington,
County of King,—ss.

K. Massusake, being sworn, says he is the within named defendant and has heard, read the foregoing motion and affidavit and knows the contents thereof and believes the same to be true. [22]

K. MASSUSAKE.

Sworn to before me this 15th day of July, 1924.
[Notarial Seal] A. G. McBRIDE,
Notary Public in and for the State of Washington,
Residing at Seattle.

The said motion to suppress evidence was in words and figures, as follows:

United States District Court, Western District,
Northern Division.

THE UNITED STATES,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

MOTION TO SUPPRESS EVIDENCE AND DISMISS THE ACTION.

The said defendant moves the Court to suppress as evidence in this cause and return the same to defendant, one certain written lease contract forcibly taken from the person of this defendant by Prohibition Agent H. J. Stetson and W. M. Whitney, and also for an order dismissing this action and quashing the search-warrant for the following reasons:

I.

That said written contract forcibly taken from defendant's person is a private paper, belonging to defendant and is a written lease between defendant and one other party for rooms in a building situate in the city of Seattle, and said contract was never used as a means for committing any crime or felony or other offense and particularly, the offense charged herein and is only of evidentiary value, and defendant asks that said evidence be suppressed.

II.

That said H. J. Stetson, prohibition agent, unlawfully searched the person of this defendant without having search-warrant authorizing him so to do, or any search-warrant in which the name of this defendant appeared. That private papers cannot lawfully be taken with or without a search-warrant, if taken against the will of the defendant for the reason that the same is prohibited by the Fifth Amendment to the Constitution of the United

States and also under the decision of the Supreme Court of the United States.

III.

That said defendant committed no crime, felony or misdemeanor in the presence of said officer when defendant [23] was arrested and searched as aforesaid, and said officer did not inform defendant that he was an officer and no search-warrant or receipt were given to defendant and said search and arrest without a warrant were a violation of this defendant's constitutional and treaty rights and said acts were illegal and void.

IV.

That about the time of the search and arrest of defendant as aforesaid, said prohibition agent aforesaid was serving a search-warrant on parties named therein, but defendant's name was not in said warrant, and when this defendant was arrested, he was only a bystander. And said officer in his return on said warrant made no mention of having searched the person of the defendant and of taking of the lease as aforesaid, and did not file any inventory or the same as the law directs which is made a crime under the penal laws of the United States.

V.

That the information contained in the lease unlawfully obtained as hereinbefore stated, was used by the prosecution in this cause in the preparation of the criminal complaint herein. That the said lease contained a description of rooms, unknown to said officers and by the use thereof defendant

is compelled to furnish testimony and information against himself in violation of his constitutional right under the Fifth Amendment to the Constitution of the United States, in this action, if the same is continued. That the affidavit, search-warrant and return are all void and should be quashed.

In support of the motions herein contained, defendant submits the following affidavit, the files in this cause and possibly oral evidence.

A. G. McBRIDE,
Attorney for Defendant.

State of Washington,
County of King,—ss.

K. Massusake being sworn says he is the defendant in the within entitled cause of action; that he has read the same and knows the contents thereof and that the allegations and statements therein made are true.

K. MASSUSAKE.

Sworn to before me this 15th day of July, 1924.

[Notarial Seal]

A. G. McBRIDE,

Notary Public in and for the State of Washington,
Residing at Seattle.

The defendant offered in evidence the affidavit for a search-warrant, the search-warrant and return of the officers, in words and figures as follows:

[24]

United States of America,
Western District of Washington,
Northern Division,—ss.

APPLICATION AND AFFIDAVIT FOR
SEARCH-WARRANT.

W. M. Whitney, being first duly sworn, on his oath, deposes and says: That he is a Federal Prohibition Agent duly appointed and authorized to act as such within the said district; That a crime against the Government of the United States in violation of the National Prohibition Act of Congress was and is being committed, in this, that in the city of Seattle, county of King, State of Washington, and within the said district of Washington, and division above named, one K. Hara, H. Y. Oka, W. Wanitamo and K. Yokyo, true name unknown to this affiant, proprietors and their employees, 606 6th Avenue South on the 11th day of March, 1924, and thereafter was, and is possessing a still and distilling apparatus and materials designed and intended for the use in manufacturing intoxicating liquor, and is manufacturing, possession, transporting, and selling intoxicating liquor, all for beverage purposes; and that in addition thereto affiant on said 11th day of March, 1924, and on previous occasions detected the odor of intoxicating liquor on said premises, and that said premises is not used as a residence but as a manufacturing plant all on the premises described as 606 6th Avenue South, Seattle, Washington, including the two doors on

each side thereof and the premises on each side of the rear thereof and on the premises used, operated and occupied in connection therewith and under control and occupancy of said above parties; all being in the county of King, State of Washington and in said district; ALL in violation of the statutes in such cases made and provided and against the peace and dignity of the United States of America.

WHEREFORE, the said affiant hereby asks that a search-warrant be issued directed to the United States Marshal for the said district and his deputies, and to any Federal Prohibition Officer or Agent, or deputy in the State of Washington, and to the United States Commissioner of Internal Revenue, his assistants, deputies, agents or inspectors, directing and authorizing a search of the person of the said above-named persons, and the premises above described, and seizure of any and all of the above-described property and intoxicating liquor, materials, containers, papers and means of committing the crime aforesaid, all as provided by law and said act.

W. M. WHITNEY.

Subscribed and sworn to before me this 12th day of March, 1924.

[Seal]

H. S. ELLIOTT,

United States Commissioner Western District of
Washington.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, H. S. Elliott, United States Commissioner for the Western District of Washington, Northern Division, do hereby certify that the application and affidavit for search-warrant contained on the reverse side hereof is a true and exact copy in my office and upon which search-warrant was issued on the 12th day of March.

H. S. ELLIOTT,
U. S. Commissioner, Western District of Washington, Northern Division. [25]

United States of America,
Western District of Washington,
Northern Division,—ss.

SEARCH-WARRANT.

The President of the United States to the Marshal of the United States for the Western District of Washington, and his Deputies, or Either of Them, and to Any Federal Prohibition Officer or Agent, or the Federal Prohibition Director of the State of Washington, or Any Federal Prohibition Agent of said State, and to the United States Commissioner of Internal Revenue, his Assistants, Deputies, Agents, or Inspectors, GREETING:

WHEREAS, W. M. Whitney, a Federal Prohibition Agent of the State of Washington, has this day made application for a search-warrant and made

oath in writing, supported by affidavits, before the undersigned, a commissioner of the United States for the Western District of Washington, charging that a crime is being committed against the United States in violation of the National Prohibition Act of Congress by one K. Hara, R. Y. Oka, and K. Yokyo, true name unknown, proprietors and their employees, 606 6th Avenue South, who was, on the 11th day of March, 1924, and is, at said time and place, *possession* a still and distilling apparatus and materials designed and intended for use in manufacturing intoxicating liquor, and manufacturing, possession, transporting, and selling intoxicating liquor, all for beverage purposes, on certain premises in the city of Seattle, county of King, State of Washington, and in said district, more fully described as 606 6th Avenue South, Seattle, Washington, including the two doors on each side thereof and the premises on each side to the rear thereof and on the premises used, operated and occupied in connection therewith and under the control and jurisdiction of said above parties;

AND WHEREAS, the undersigned is satisfied of the existence of the grounds of the said application, and that there is probable cause to believe their existence,

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, and authorized and empowered in the name of the President of the United States to enter said premises with such proper assistance as may be necessary, in the daytime, or night-time, and then and there diligently investigate and

search the same and into and concerning said crime, and to search the person of said above-named persons, and from him or her, or from said premises seize any or all of the said property, documents, papers and materials so used in or about the commission of said crime, and any and all intoxicating liquor and the containers thereof, and then and there take the same into your possession, and true report make of your said acts as provided by law.

Given under my hand and seal this 12th day of March, 1924.

H. S. ELLIOTT,

United States Commissioner, Western District of Wash.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, H. S. Elliott, United States Commissioner, do hereby certify that the search-warrant contained on the reverse side hereof is a true and exact copy of the search-warrant on file [26] in my office and which issued by me on the 12th day of March, 1924.

H. S. ELLIOTT,

U. S. Commissioner, Western District of Washington, Northern Division.

RETURN OF SEARCH-WARRANT.

Returned this 13 day of March, A. D. 1924.
Served, and search made as within directed, upon which search I found 182 gals. of distilled spirits

(D. S.), 178 destroyed, 2 lock and keys, 7 suitcases—
Held as evidence 7 samples of grape wine, 1 pack-
age of papers, 33 boxes of raisins, 1 press, 14
sacks of sugar, 1 raisin grinder, 2 gallon metal
cans.

Destroyed 1300 gals. grape wine, 7-100 gal. bbls.—
12-50 gal. bbls—65-10 gal. kegs—15-5 gal. kegs,
1 gas stove.

H. J. STETSON.

United States of America,
Western District of Washington,
Northern Division.

I, H. S. Elliott, United States Commissioner, do
hereby certify that the above is a true copy of the
return upon a search-warrant issued by me on the
12th day of March, 1924, for the premises de-
scribed as 606-6th Avenue South, Seattle, Washing-
ton, including the 2 doors on each side thereof and
the premises on each side and to the rear thereof.

H. S. ELLIOTT,

United States Commissioner, Western District of
Washington, Northern Division.

March 19th, 1924.

Defendant also introduced in evidence three affi-
davits made in writing, by defendant, K. Massu-
sake, K. Shilama and Kiyochi Muracka, in words
and figures as follows:

AFFIDAVIT OF K. MATSUSAKA.

State of Washington,
County of King,—ss.

K. Matsusaka, being first duly sworn on his oath

[27] deposes and says: That he is a native-born citizen of Japan and a subject of that Government; that he has resided in the United States since the year 1908, and for about four years last past he has been conducting a hotel business at 604½ Sixth Avenue South, in the city of Seattle, King County, State of Washington.

That he has always been a law-abiding resident of this country and has never before March 12th, 1924, been arrested on any charge or in any manner charged with any violation of the laws of the United States, the State of Washington, or the city of Seattle. That he has not kept any intoxicating liquor in his hotel and prevented guests from doing so far as it was within his power and knowingly never permitted anyone to have and possess any such liquor in any part of his said hotel.

That on or about the 12th day of March, 1924, this affiant was in an expressman's room in the basement of the said hotel building and was wearing a so-called sweater-coat in one of the pockets of which, was a written and signed lease which protruded so that the same could easily be seen when an officer, who affiant afterwards learned was a Prohibition Agent, spoke to this affiant and said:

“Give me that paper.”

I said, “No, its mine, a lease.”

The said officer then forcibly took said paper out of my pocket and I said to the officer, “Give me back that paper.” Another officer, then struck me on the mouth with his clenched fist cutting open the lower lip which bled for a long time and did not

heal for a week. Later an officer took me to the Immigration Station in Seattle, where I was kept until the next day when I was released on a bond in cash for Five Hundred Dollars.

I do not speak English very well, but understand nearly everything that is said to me. [28]

The officer did not hit me until after the first officer had the paper in his hand. The second officer became angry when I asked the first officer to give me back the paper. I said I did nothing to provoke him except what I have said. My front teeth protrude and are quite large and the officer hit me so hard that he hurt his hand and cut it open and a man that was there put some peroxide on it.

I understand that the officers found some liquor in two or three rooms, but no liquor was found in any room or place which was under my control. So I maybe understood, will say that the officer who took the paper from me did not strike me, it was the other officer to whom I had not spoken to at all.

K. MATSUSAKA.

Subscribed and sworn to before me March 25th, 1924.

[Notarial Seal]

A. G. McBRIDE,

Notary Public for the State of Washington, Residing at Seattle.

AFFIDAVIT OF K. SHITAMA.

State of Washington,
County of King,—ss.

K. Shitama, who being duly sworn, says:

That he lives at 110 Eighth Avenue South, in the

city of Seattle, King County, State of Washington, is over 21 years of age and was born in Japan and is a subject of that government at this time and has lived in said city for the last past twelve years.

That he is well acquainted with K. Matsusaka, also a Japanese, who conducts a hotel at 6041½ Sixth Avenue South, in the city of Seattle, and that I saw him in the evening of March 12th, 1924, at his hotel. A prohibition agent or officer was there. They were in an expressman's room in [29] the basement of the hotel building. I saw no trouble between the officers and K. Matsusaka, but when I got there, I saw that the officer's hand was hurt and was bleeding and I put some peroxide on the wound. I also saw that Matsusaka's lower lip was badly hurt and was bleeding. I did not see the officer strike him.

K. SHITAMA.

Subscribed and sworn to before me this 25th day of March, 1924.

[Notarial Seal]

A. G. McBRIDE,

Notary Public for the State of Washington, Residing at Seattle.

AFFIDAVIT OF KIYOSHI MURACKA.

State of Washington,
County of King,—ss.

Kiyoshi Muracka, being duly sworn, on oath says:

That he is 34 years of age and lives at 1033 King Street in the city of Seattle, King County, Washington, and that he has known K. Matsusaka for three years.

On the evening of March, 12th, 1924, I saw said K. Matsusaka and two prohibition officers or agents in the basement of the hotel building in which K. Matsusaka conducts a hotel. One of the officers took a paper from K. Matsusaka's outside coat pocket and he asked the officer to give him back his paper, and then the other officer hit K. Matsusaka on the mouth with his fist. I do not know the names of the officers. Matsusaka did not speak to the man that hit him. He did not in any manner resist the officers. The assault was unprovoked. His mouth was hurt and bled and the officer hurt his hand when he hit Matsusaka and it bled considerable. I was about ten feet away. It was not the officer that took the paper from Matsusaka's pocket that hit him. K. Matsusaka is a quiet and inoffensive man. I never knew him to have any trouble with any other man.

KIYOSHI MURACKA.

Sworn to before me this 25th day of March, 1924.

[Notarial Seal]

A. B. McBRIDE,

Notary Public for the State of Washington, Residing at Seattle. [30]

Thereupon, counsel engaged in oral arguments and the said motions were submitted to the Court for its decision, and the Court overruled both of said motions and gave as a reason therefor that the defendant having denied that he was the owner, or in the possession of the premises searched under the search-warrant, the defendant was without right to attack the validity of the search-warrants, their service and the return thereon. To which said rul-

ing counsel for defendant then and there duly accepted.

Thereafter, and on the 18th day of December, 1924, said cause came regularly on for trial on the issues joined by the information filed herein and the plea of not guilty entered by the defendant, the Government was represented by assistant district attorney, J. W. Hoar, and defendant appeared in person and by his attorney A. G. McBride. Twelve men were called and accepted by plaintiff and defendant to serve as jurors in said action. Counsel for the Government made his opening statement and defendant waiving a statement, Walter M. Justi was called as a witness in behalf of the Government, thereupon, counsel for the defendant renewed his motions for the quashing of the search-warrant and return and the suppression of evidence taken thereunder. Counsel proceeded to state his ground why said motion should be granted when the Court asked counsel if the grounds were the same as those presented when the said motions were overruled, to which counsel for defendant stated that in part only and that he desired to call the attention of the Court to the fact that if a defendant was estopped from attacking the validity of a search-warrant, the service thereof and the return, including the affidavit on which the warrant was issued unless he, the defendant claimed the liquor seized, then the defendant could not defend unless he admitted guilt. If defendant must admit ownership or possession in order to free himself of estoppel, he is compelled to admit guilt, because Con-

gress declared in an enactment [31] that from possession, guilt is presumed.

The Court then overruled defendant's motions and reaffirmed its former decision on said motions, to which said ruling, defendant then, there and at the time excepted.

The taking of evidence was then commenced.

Counsel for defendant stated to the Court that there was no dispute as to the amount of liquor found in the two rooms in the southeast corner of the basement of the building, including that found in the stairway, and outside of the legal questions involved, the defendant was only denying that the liquor taken was his, or that he knew anything about it being there and that it belonged to the expressman.

TESTIMONY OF WALTER M. JUSTI, FOR THE GOVERNMENT.

Thereupon, WALTER M. JUSTI, a witness for the Government was duly sworn and in substance testified as follows:

I have been a Government prohibition agent for 3 years and participated in the service of the search-warrant served in this case. Director Whitney and agents Moering and Stetson were assisting, which occurred March 12th, 1924. I know the defendant who conducts a hotel at 604½ Sixth Avenue South. His hotel is on the second and third floors. The heating plant and hot-water appliances are located in the rooms in which we found a large quantity of liquor.

(Testimony of Walter M. Justi.)

The liquor was offered in evidence and defendant objected for the reason that the search-warrant, the affidavit upon which it was issued were void as against defendant and the rooms were not described and defendant's name was not inserted in the warrant and for the reasons also set forth in the petition and motion to suppress the evidence. The Court overruled the objection and defendant then and there excepted. [32]

The liquor was then introduced as evidence and consisted of many suitcases containing one-gallon glass jugs. The liquor was all moonshine and intoxicating, as shown by the evidence.

The witness continued: We found a large quantity of liquor in a well where the stairway or stairs leading up to the first floor of the building had been but the stairway was not in use and had not been used for years, except to hide liquor. The stairway had lead up from the room in which the heating plant is located.

The witness also said the defendant at first admitted he owned all the liquor but afterwards denied it. Also, that when defendant first appeared when these rooms were entered, the defendant had a paper written on a typewriter and signed by two parties which he showed to Director Whitney. The paper was a lease from defendant to another man. The defendant ran around there in a threatening manner and I hit him with my fist. There was a big box in the room that I had seen up in the hotel and that had 7 gallons of liquor in it. One of the

(Testimony of Walter M. Justi.)

keys we took from defendant unlocked the box. The defendant kept baggage in those rooms. There was also a clothes line on which there was some family washing belonging to the defendant. We found nothing but moonshine liquor there. We could smell it from an adjoining room. There were 7 suitcases of liquor. Defendant said he only had access to the room where exhibits were. Witness denied that any of the prohibition officers broke open or destroyed any barrels in rooms 606.

TESTIMONY OF W. N. WHITNEY, FOR THE GOVERNMENT.

W. N. WHITNEY, assistant prohibition director who being duly sworn testified in substance as follows:

Agents Stetson, Moering, myself and Justi went [33] to the basement to search 606, 6th Avenue South, 606 was occupied by the Cascade Soda Company. There were two other rooms we entered, boiler and heating plant in one. Stairway in that room, but stairs torn out. Used a ladder. Defendant said it was his basement and had only key—no one else. Also said storeroom was his. Old things, suitcases and junk in the room. There was a box there. Defendant afterwards denied his statements and said “Oh?” and “Ah?” Defendant when he came down from the hotel above handed me a written and signed lease and said he had leased the two rooms to an expressman. I told him to go and find the expressman and if he found him I would not

(Testimony of W. N. Whitney.)

arrest him. He went away and when he returned he said he could not find him and then I arrested the defendant. When he first handed me the lease I read it and gave it back to him, but afterwards I took from him a bunch of keys. I also saw the big box in one of the rooms, Agent Justi spoke of in his evidence. I had seen the box previously in the hotel. The box had liquor in it and defendant had a key that unlocked it. I did not try to find the expressman, I got the right man, the director said.

Officer H. B. Moering, who qualified as a witness and said he participated in the raid. That defendant made a rush at him. The defendant had a key to the big box. Told about finding liquor.

Copies of the lease and a drawing of the basement were introduced in evidence and are hereto attached and made a part hereof. They are designated as Defendant's Exhibits "A2" and "A1."

At the close of the plaintiff's evidence, defendant moved the Court for a directed verdict, in favor of defendant upon all the grounds heretofore urged for a suppression of evidence and quashing of the search-warrant, and that the evidence was insufficient, which said motion the Court overruled, and defendant excepted. [34]

TESTIMONY OF G. NCHIDA, FOR THE
DEFENDANT.

G. NCHIDA, a witness for the defendant, being duly sworn, testified in the English language in substance as follows:

I am a Japanese, 38 years of age, married and have two children.

That he was well acquainted with the defendant and had known him for about four years. That during said time he conducted the hotel and apartment house called the "Pacific Hotel," corner of Weller Street and Sixth Avenue South, in Seattle. That the witness and his family lived in defendant's hotel for about three years. Said hotel is conducted in the two upper floors of said hotel building. That the lower floor is a basement. That defendant had two baggage-rooms, one on his first floor and one on the second. That he never used any part of the basement as a baggage-room. That defendant was a good man and bore a good reputation among his friends and acquaintances. That he was not a drinking man and never allowed any person in his hotel to have liquor if he knew it. That during the three years that the witness lived in defendant's hotel, two bootleggers were discovered and defendant made them leave the hotel as soon as he found out that they were bootleggers. There are more than sixty rooms in defendant's hotel and there were a great many families living there. The defendant is also a Japanese and

(Testimony of G. Nchida.)

does not speak or understand the English language very well and the witness acted as interpreter for defendant in his business when he was at his home. Before the defendant was arrested in this case, I saw an expressman carry some empty bottles into the basement of the hotel and I also saw the expressman carry a very heavy suitcase in and out of the basement. The expressman had rented the boiler and hot-water plant and a small room in front of said boiler-room. I never knew of [35] defendant using said basement rooms except that he had the right to go into said rooms to keep a fire to heat his hotel and to provide hot water.

TESTIMONY OF REV. K. EMURA, FOR THE DEFENDANT.

Rev. K. EMURA, a witness for defendant, was duly sworn and testified in substance as follows:

I am a minister and for some time have been the pastor of the Japanese Presbyterian Church, a branch of the First Presbyterian Church, 922 9th Avenue South, and the defendant attends my church. He has come to my church for several years and expects to become a member. Applicants for membership must wait for about one year. I know the defendant real well and know a great many Japanese. The defendant is considered a good man by those who are acquainted with him.

TESTIMONY OF K. MASSUSAKE, IN HIS
OWN BEHALF.

The defendant, K. MASSUSAKE, being first duly sworn testified in his own behalf. Taking his evidence was started in the English language, but was so unsatisfactory that the Court ordered that an interpreter be secured. His evidence follows:

I am the defendant. I am a native of Japan. I have conducted a hotel and apartment house at Weller Street and Sixth Avenue South, in Seattle for four years last past, and it is called the Pacific Hotel. I have the second and third floors of the building, more than 60 rooms in all. I also have a small room and boiler-room in the basement. I rented those rooms in the basement to an expressman and I reserved the right to go into the boiler-room to keep a fire for heat and warm water. These rooms are in the southeast corner of the building. The balance of the basement was used by some people that made soft drinks. The number of the rooms occupied by said soft-drink men was 606 Sixth Avenue South. The boiler-room and small room had no number. I have [36] never been arrested before in all my life. The police found 2 bootleggers in my hotel during the four years I was there, but they did not arrest me. I made the bootleggers go away from my hotel. The number of my hotel is 604½ Sixth Avenue South. I don't use liquor and never

(Testimony of K. Massusake.)

let anyone stay at my hotel that kept it if I knew it.

I remember the time I was arrested; I went down to the basement where the officers were. I heard the officers say that I was to have said the liquor in the two rooms and in the stairway was mine, but that is not true. I told the officers I leased the rooms and showed one of the officers (Whitney) the lease and he read it and I denied owning or having anything to do with the liquor. I told them the expressman owned the liquor and the officer (Whitney) told me if I would go and find the expressman they would not arrest me and I and my wife went and tried to find the expressman, but we could not find him, and then they arrested me. When I showed the officer the lease, he read it and gave the paper back to me, but afterwards he took the paper from me. I asked him to give me back the paper and another officer hit me on the mouth with his fist. There was a big box in the basement that was mine and used to be up stairs. The officer said one of my keys unlocked the box. I don't know. I had no liquor in the basement and knew nothing about it. The officer took the paper from me and my keys too. He did not give me any receipt or inventory. The officers did not try to find the expressman and they never came to me and ask me to help find him. He was in Seattle a long time.

The witness was asked if he saw any of the officers destroy any barrels and other things such as

(Testimony of K. Massusake.)

kegs, bottles or jugs. His answer was: I saw the officers destroy and pound to [37] pieces some barrels in the rooms numbered 606, for which I was told they had a search-warrant. I helped to destroy the barrels. I used an ax. The officers made me help them. I was under arrest at the time.

TESTIMONY OF MR. PARSHAL, FOR DEFENDANT.

Mr. PARSHAL, a witness on behalf of the defendant after being duly sworn as a witness, testified as follows:

I am the secretary of the Squire Investment Company, with offices in the Empire Building. It is a corporation. I perform many of the duties of a manager. Our corporation owns the building in which defendant conducts a hotel called the Pacific Hotel, at 604½ Sixth Avenue South, Seattle. There is a boiler-room and a small room in the southeast corner of the basement. The boiler-room has a heating and hot-water appliance and is used in connection with the hotel. The west half and the north half of the east half of the basement was occupied by the Cascade Soda Company. Its rooms were numbered 606 Sixth Avenue South. The boiler-room and other little room had no number. I was down to see the building the day after the officers raided the basement of our building. Someone had destroyed a number of barrels and other containers. There was a

(Testimony of Mr. Parshal.)

very bad odor in the basement caused by the smashing of the barrels and the contents being left on the concrete floor. The defendant has been our tenant for the second and third floor of said building and the boiler-room for about four years. I go down to see the place quite often and keep myself informed with regard to the illegal use of the place. We have always found the defendant a good man and a good tenant. I believe he bears a good reputation among those who know him. We have never had any complaints. Once or perhaps two times, I heard [38] bootleggers were discovered in the hotel, but no complaint was ever made by the prohibition officers and the defendant was not arrested, or blamed for the presence of these law violators.

TESTIMONY OF SERGEANT GRIFFITH, FOR THE GOVERNMENT.

Sergeant GRIFFITH, being duly sworn as a witness, testified as follows in substance:

I am a sergeant of police in which the building occupied by defendant as a hotel is located. I have known the defendant and his place of business for three years or more. Before I became a sergeant I was a patrolman in that district. I know the general reputation of defendant's hotel and his reputation too. We have different ways of getting and knowing the reputation of a place. There are certain occurrences and signs that give

(Testimony of Sergeant Griffith.)

officers information on that subject. Where drink is sold, drinking men will gather, and will be seen going in and out. I have had occasion to know the reputation of all the hotels, rooming-houses and soft-drink parlors in my district for years. I don't know of a cleaner place in that district than the hotel conducted by defendant at 6041½ Sixth Avenue South. Not only as to liquor and bootlegging, but we never took a woman out of his hotel. He has also always rendered the police department any service he could give us when called on. His reputation and his hotel have the very highest and best reputation in the police department.

The defendant asked the Court to instruct the jury as follows:

Under the rule of *falsus in uno, falsus in omnibus*, and also to the effect that the evidence of the prohibition officers in which they declared the defendant practically admitted his guilt, should be taken and considered with extreme caution for the reason that defendant not understanding and speaking the English language well might have been misunderstood. [39]

The Court refused to instruct as requested. Counsel for defendant preserved an exception to said ruling.

AND NOW, in furtherance of justice, and that right may be done, the defendant, K. Massusake, tenders and presents to the Court the foregoing as his bill of exceptions in the above-entitled cause,

and prays that the same may be settled and allowed and signed and sealed by the Court and made a part of the record of this case.

A. G. McBRIDE,
ADAM BEELER,
Attorneys for Defendant.

Service of a copy hereof hereby acknowledged this 9th day of March, 1925.

J. W. HOAR,
United States Attorney.

The foregoing bill of exceptions is hereby settled. There was evidence for the prosecution not herein contained but I do not now remember any that appears material upon the writ of error. There was no stenographic report of the proceedings and it has been five months since the trial.

Certified this 21st day of May, 1925.

EDWARD E. CUSHMAN,
Judge. [40]

DEFENDANT'S EXHIBIT "A-2."

AGREEMENT.

This agreement is entered into contract between K. Matsusaka, the party of the first part and —, the party of the second part, on this Thirty-first day of December, A. D. 1923, to wit:

1. The party of the second part is hereby granted by the party of the first part to occupy and use a portion of a storage room in a basement in a certain hotel known as the Pacific Hotel, located at 604½

Six Avenue South, in the city of Seattle, County of King, State of Washington, for the consideration of payment of rent in the amount of TEN (\$10.00) DOLLARS per month.

2. The party of the first part is not leased the said premises of the aforesaid Pacific Hotel from the owner, but the party of the first part is rented on the month basis.

3. The party of the second part is understood and promised to the party of the first part to vacate and surrender the aforesaid storage-room to the party of the first part in such event as the party of the first part vacate and surrender the aforesaid Pacific Hotel to its owner.

4. Rents all have to be paid on or before the first day of each and every month. The receipt of first payment of TEN (\$10.00) DOLLARS for the month of January, 1924, A. D.; is hereby acknowledged by the party of the first part.

5. It is understood and promised that the party of the second part shall used aforesaid storage-room on a *bona fide* and legal purpose, and this contract shall have to be made void and nil in case of any illegal conduct of the said party of the second part. Any portion or portions of the unworked part of rent paid in advance shall have to be confiscated as fine to the party of the first part in such event of aforesaid illegal conduct and its subsequent cancellation of this contract.

The party of the first part is in no way responsible for the conducts of the said party of the second part.

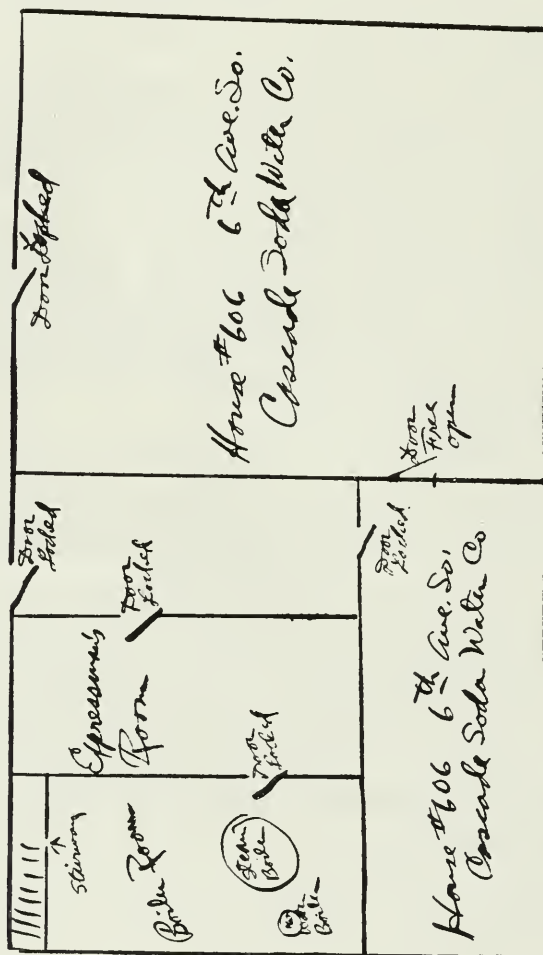
[Signed] T. TENCHI,

Second part.

[Signed] K. MATSUSAKA,

First part. [41]

DEFENDANT'S EXHIBIT "A-1."



[Endorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Mar. 9, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 21, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [42]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

ORDER EXTENDING TIME THIRTY DAYS
TO FILE RECORD AND DOCKET CAUSE.

This matter coming regularly on for hearing on the application of the defendant, K. Massusake, for an order extending the time in which to file and docket the record in the Circuit Court in the above-entitled cause, the Court being fully advised in the premises and good cause being shown;

IT IS HEREBY ORDERED that the time within which to file and docket the record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and

hereby is, extended thirty (30) days from the date hereof.

Done in open court this 21st day of May, 1925.

EDWARD E. CUSHMAN,

Judge.

Service of the foregoing order by receipt of a true copy thereof, is hereby acknowledged this 21 day of May, 1925.

J. W. HOAR,

United States Attorney.

O. K.—J. W. HOAR.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 21, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [43]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

K. MASSUSAKE,

Defendant.

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of record on appeal to the Circuit Court of Appeals of the Ninth

Circuit in the above-entitled cause, and include therein the following:

1. Information.
2. Arraignment of defendant.
3. Plea.
4. Record of trial and impaneling jury.
5. Verdict.
6. Motion for new trial.
7. Hearing of motion for new trial.
8. Judgment and sentence of defendant.
9. Petition for writ of error.
10. Assignments of error.
11. Order allowing writ of error.
12. Supersedeas.
13. Citation.
14. Writ of error.
15. Order of January 6, 1925, extending time to serve and file bill of exceptions.
16. Order of March 2, 1925, extending time to serve and file bill of exceptions. [44]
17. Bill of exceptions.
18. Order settling bill of exceptions.
19. Order of May 21, 1925, extending time to file and docket in Circuit Court record on appeal.
20. Defendant's praecipe.

A. G. McBRIDE,
ADAM BEELER,
Attorneys for Defendant.

We waive the provisions of the act approved February 13, 1911, and direct that you forward type-written transcript to the Circuit Court of Appeals

for printing as provided under Rule 105 of this Court.

A. G. McBRIDE,
ADAM BEELER,

Attorneys for Plaintiff in Error.

Received copy of praecipe May 21, 1925.

J. W. HOAR,
Attorney for Plaintiff.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. May 21, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy. [45]

In the United States District Court for the Western District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATUSAKE,
Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of

record, consisting of pages numbered from 1 to 45 inclusive, is a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [46]

Clerk's fees (Sec. 828 R. S. U. S.) for making	
record, certificate or return, 109 folios	
at 15c	\$16.35
Certificate of Clerk to transcript of record,	
4 folios at 15¢,60
Seal to said certificate20
	<hr/>
Total	\$17.15
	<hr/>

I hereby certify that the above cost for preparing and certifying record, amounting to \$17.15 has been paid to me by the attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 12th day of June, 1925.

[Seal] ED. M. LAKIN,
Clerk U. S. District Court Western District of
Washington.

By S. M. H. Cook,
Deputy. [47]

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATSUSAKE,
Defendant.

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America,
to the Honorable Judges of the District Court
of the United States for the Western District of
Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is

in said District Court, before the Honorable Jeremiah Neterer, between K. Matsusake, the plaintiff in error, as by his complaint and petition herein appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf,

DO COMMAND YOU, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, together with this writ, so that you have the same at said city of San Francisco within thirty days from the date hereof, in said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being then and there inspected, said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 6th day of January, 1925, and the year of the Independence of the United States one hundred and forty seventh.

ED M. LAKIN,

Clerk of the District Court of the United States
for the Western District of Washington.

By S. M. H. Cook,

Deputy. [48]

Acceptance of service of within writ of error,
acknowledged this 6th day of January, 1925.

THOS. P. REVELLE,
Attorney for Plaintiff. [49]

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Northern
Division. Jan. 6, 1925. Ed. M. Lakin, Clerk,
By S. M. H. Cook, Deputy.

In the United States District Court for the Western
District of Washington, Northern Division.

No. 8652.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

K. MATSUSAKE,
Defendant.

CITATION ON WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America,
to the United States of America, and to
THOS. P. REVELLE, United States Attorney
for the Western District of Washington,
Northern Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court
of Appeals for the Ninth Circuit at San Francisco,
in the State of California, within thirty days from

the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein the said K. Matsusake is the plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 6th day of January, A. D. 1925.

EDWARD E. CUSHMAN,
United States District Judge.

Attest: ED. M. LAKIN,
Clerk of the District Court of the United States
for the Western District of Washington.

By S. M. H. Cook,
Deputy.

Service of the within citation and receipt of a copy thereof is hereby admitted this 6th day of January, 1925.

THOS. P. REVELLE,
Attorney for Plaintiff. [50]

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 6, 1925. Ed. M. Lakin, Clerk. By S. M. H. Cook, Deputy.

[Endorsed]: No. 4665. United States Circuit Court of Appeals for the Ninth Circuit. K. Matusake, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed Aug. 17, 1925.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.